IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 444 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGVANDAS C.PATEL - Appellant(s)
Versus
NEW AHMADI RESTAURANT & 3 - Opponent(s)

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Appearance :

MR PRANAV G DESAI for Appellant : 1,
NOTICE UNSERVED for Respondent : 1,
UNSERVED-EXPIRED for Respondent : 2.2.1
MR AR MAJMUDAR for Respondent : 2.2.2
MR DD VYAS for Respondent : 3,
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 4,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 25/01/2007

ORAL JUDGMENT

1. The Baroda Municipal Corporation, through its Food Inspector Bhagvandas C. Patel has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) challenging the order of acquittal dated 15.2.1991 passed by the learned JMFC (Mun.) Vadodara in Criminal Case No. 8090 of 1985 acquitting the present respondents original accused of the charge of commission of offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1955 (hereinafter referred to as 'the Act' for short).
2. This Court (Coram: K.J. Vaidya, J.) vide order dated 20.4.1995 granted leave and admitted the appeal.
3. Brief facts leading to filing this appeal deserves to be set out as under.
4. The concerned Food Inspector - original complainant on 2.1.1985 at 9-30 in the morning alongwith his staff and equipment visited the place of accused called “New Ahmedi Restaurant” at Nyaymandir Road, Baroda. One Mahmad Abbas Gulam Mahmad was present in the Restaurant at that time. The Food Inspector after introducing himself, indicated his intention to collect the food sample for analysis by Public Analyst, purchased the sample food article. He summoned the panch for witnessing the collection of sample. The restaurant was engaged in preparing food to serve its customer. In the cup-board

about 7 Kgs. of rice were stored. The complainant Food Inspector purchased 750 grams of rice for the purpose of analysis after paying its price. The said sample food article was divided into three equal parts and collected in odourless and clean glass bottles. The glass bottles were sealed in accordance with law. One portion of the sample food article was sent to the Public Analyst in accordance with law and remaining two samples were sent to Local Health Authority as per requirement of law. The sample food article was declared to be adulterated on account of presence of colour. Thereafter, the requisite sanction was obtained from the Local Health Authority for lodging the prosecution. The prosecution was lodged in form of complaint, which came to be registered as Criminal Case No. 8090 of 1985 against the accused. As it is noticed by the trial Court, during the pendency of the trial, one of the accused passed away and therefore, the complaint qua him was abated and for remaining accused, the trial was conducted. The trial Court has recorded acquittal on account of infirmity in the order of sanction pursuant whereof the prosecution was lodged. The trial Court has observed that as the order of sanction at Ex. 38 page No. 81 of the paper-book being cryptic and not containing the reasons, was suffered from non-application of mind and therefore, the prosecution was held to be vitiated. The trial Court, accordingly

acquitted the respondents original accused of the charge of commission of offence punishable under Sections 7 and 16 of the Act vide order dated 15.2.1991, which is impugned in the present appeal.

5. This being an acquittal appeal, this Court ordinarily should not interfere with the order of acquittal unless and until it is aptly demonstrated by the appellant that the order of acquittal impugned in the appeal has resulted into miscarriage of justice and it is patently erroneous and perverse. In absence of such plea, the order of acquittal need not be interfered with under Section 378 of the Code.

6. It also deserves to be noted that the order of acquittal could be sustained in acquittal appeal under Section 378 of the Code on the independent grounds, if capable of being made out from the record.

7. The trial Court's reasoning for recording finding that the order of sanction at Ex. 38 was not proper and cannot be sustained and therefore, the same deserves to be reversed. The Apex Court has in case of ***SURESH H. RAJPUT AND OTHRES VS. BHARTIBE PRAVINBHAI SONI AND OTHERS,*** reported in (1996) 7 SCC p.199 has held that the sanctioning authority while considering the relevant papers finds that, the sanction is cryptic and shows non-application of mind, then the sanction could not be assailed as being invalid and vitiating the prosecution.

8. The order of sanction clearly discloses that the sanction was not given after going through the report of the Public Analyst and other papers and documents and the nature of offence committed by the alleged offender. The offender's name has been set out in the order of sanction. Therefore, this order of sanction cannot be said to be invalid so as to vitiate the prosecution. The trial Court's finding with regard to the order of sanction being invalid, deserves to be reversed and quashed and set aside and accordingly, the same is quashed and set aside.

9. It may be noted that the order of acquittal is essentially based upon this infirmities in the order of sanction and therefore, now, it would be essential to examine as to whether the order of acquittal deserves to be sustained on the strength of evidences available on the record. As stated hereinabove, it is open to this Court under Section 378 of the Code to sustain the order of acquittal on the entirely independent and new grounds, then those relied upon by the trial Court for recording the acquittal, if new grounds are available from the records and proceedings.

10. The following emerge from the reading and appreciating the evidence on record.

(i) The sample food article of Rice was collected from the Restaurant – accused No. 1 on 2.11.1985.

(ii)The Restaurant was not trading the rice in question.

(iii)The Rice were kept in restaurant for the purpose of making food article out of the rice to serve to their customers.

(iv)It cannot be said that the rice was permitted to use adulterated food stuff of a raw material for making out the final product to be served to the customers but this is the important factor to be borne in mind that the rice were in the process of being used for making out the ultimate product of food to be served to the customers. The possibility of noticing adulteration in the rice while it being used, can also not be brushed aside.

(v)The sample food article rice were kept in a loose form in a tin and therefore, there was every possibility that it being coming into contact with other material even if the ladle is used for collecting the different material while preparing the food article.

(vi)The prosecution has not adduced evidence to show that respondent No.4 was the person, who had produced the rice as he is sought to be roped in as warranter.

(vii)The Public Analyst report indicates that the sample food article was found adulterated only on account of presence of added colour.

(viii)The report of the Public Analyst at Ex. 36

did not specify as to whether it was an artificial colour or edible colour nor did it specify the quantity. Though the trial Court has negatived the charge against the report of the Public Analyst, this factor deserves to be borne in mind while examining the order of acquittal.

(ix)The trial Court has also noted at many places in the order of acquittal that the accused No. 1 is joined as accused firm and accused No. 2/1 and 2/2 were joined as accused as partners in the firm and accused No. 3 was joined as a partner and vendor and accused No. 4 was joined as warranter. Accused No. 3 appeared to have died during the pendency of the trial and the case against him abated. The accused No. 2/1 and 2/2 were partners, have not been proved by the prosecution. No sufficient evidence has been brought on record about the ownership of accused No. 1 firm.

(x)It is also important to note that the sample was not collected in presence of accused Nos. 2/1 and 2/2 and 3 and 4.

(xi)The trial Court has also recorded that the sample food article was purchased from the open tin and therefore, the accused No. 4 could not have been roped in as there was no evidence showing that the sample food article was being purchased in the same condition, in which it was purchased from respondent No. 4.

11.In view of the aforesaid, it is required to be examined whether the impugned order of acquittal

deserves to be sustained when this Court has negatived the finding of the trial Court in respect of the valid sanction. The answer is in affirmative. As it is stated hereinabove, under Section 378 of the Code, this Court has to sustain the order of acquittal even on the independent and different reasons then those of trial Court's, otherwise, the order of acquittal is just and proper and has not resulted into miscarriage of justice. It deserves to be noted that sample was collected way back on 2.11.1985. The lapse of time and death of one of the accused and other circumstances would go to show that the order of acquittal in 2007 does not call for any interference. In the result, this Court is of the considered view that this Court may not in complete agreement with all the findings of the trial Court and the order of acquittal impugned in this appeal does not call for any interference and therefore, the appeal deserves to be dismissed.

12. In view of the aforesaid, the appeal fails and is dismissed.

(S.R.BRAHMBHATT, J.)

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